

**THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Miami Division**

Howard Adelman and Judith Sclawy,  
as Co-Personal Representatives of  
The Estate of Michael Sclawy-Adelman,

CASE NO. 1:10-cv-22236-ASG

Plaintiffs,

District Ct. Judge: Alan S. Gold

vs.

Boy Scouts of America, a Foreign Corporation; Magistrate Judge: Chris M. McAliley  
The South Florida Council Inc.,  
Boy Scouts of America;  
Plantation United Methodist Church;  
Howard K. Crompton, individually; and  
Andrew L. Schmidt, individually,

Defendants.

**DEFENDANT, SOUTH FLORIDA COUNCIL'S MOTION FOR PROTECTIVE ORDER**

COMES NOW, Defendant, South Florida Council, by and through its undersigned counsel, and pursuant to Local Rule 26.1(h)(3); and Federal Rule of Civil Procedure 26(b)(1), (b)(2)(B) and (c); Rule 30 and Rule 34, hereby moves for a Protective Order concerning the Notices of Deposition Duces Tecum for John Anthony, Joshua Christ, Joe Knight and Jeff Hunt and states more fully as follows:

1. This is a wrongful death/negligence action stemming from an incident that occurred on May 9, 2009, when Michael Sclawy-Adelman allegedly died of a heat stroke while taking part in a hike through The Florida Trail in the Big Cypress National Park of the Florida Everglades.
2. The depositions of South Florida Council's Corporate Representatives are scheduled for February 14<sup>th</sup> and 18<sup>th</sup>. The deponents who were requested and who will be produced are John Anthony, Joshua Christ and Joe Knight. See Notices of Depositions, **Exhibits "A, B & C."** Jeff Hunt is no longer an employee of The South Florida Council, therefore is no longer a 30(b)(6) corporate representative. The South Florida Council cannot

guarantee his appearance, although he has confirmed that he will be present. *See* Notice attached as **Exhibit “D.”**

3. All four Notices include the same areas of inquiry and request the same documents. The objections below correlate with Schedule A in all four Notices
4. Counsel for Plaintiffs and the undersigned spoke at length on January 25, 2011 in a good faith attempt to resolve numerous discovery issues concerning these depositions. While each side made certain concessions, the parties were unable to reach an agreement to limit the scope of the requests made under the attached Notices of Depositions. Undersigned attempts to recount all of the concessions and remaining disagreements made by both sides to the best of their recollection. Any inaccuracies are inadvertent.

#### **MEMORANDUM OF LAW**

5. Generally, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense. . .” Fed.R.Civ.P. 26(b)(1). “In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. *Id.* at 30(b)(6). “A deposition notice is sufficiently particular when it is relevant to the case’s underlying claims, covers a reasonable period of time, and is narrowly tailored.” Astellas Pharma, Inc. v. Impax Laboratories, Inc., Slip Copy, 2009 WL 2392166 at \*3 (N.D.Cal. 2009). Similarly, requests for producing documents “must describe with reasonable particularity each item or category of items to be inspected.” Fed.R.Civ.P. 34(b)(1)(A). “The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. . .” *Id.* at 26(c). Courts have broad discretion in

this regard and in deciding the degree of protection necessary. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36; 104 S.Ct. 2199, 2209 (1984).

6. Courts issue protective orders when corporations are asked to respond to overly broad or unfocused Rule 30(b)(6) notices. An overbroad 30(b)(6) notice “subjects the noticed party to an impossible task” because the corporation cannot identify the limits of the matters for examination. Reed v. Bennett, 193 F.R.D. 689, 692 (D. Kan. 2000) (granting in part defendant’s motion to quash or modify notice, which was overbroad and prevented defendant from being able to identify the outer limits of the areas of inquiry noticed.).
7. The Notices discussed below request materials previously produced, are unduly burdensome and are extremely over broad. A protective order is necessary to protect the South Florida Council and the deponents from annoyance, oppression and undue burden and expense.

### **South Florida Council Notices of Depositions**

#### **SCHEDULE A**

8. Item 1 of Schedule A requests,

“All non-privileged correspondence, emails or other types of communication between the South Florida Council and/or this deponent and Troop 111.”
9. This request is unduly burdensome, unduly expensive, overly broad, vague, ambiguous, harassing, not limited in scope, irrelevant and not described with reasonable particularity.
10. South Florida Council asserts that the request should be limited to non-privileged correspondence between the named deponent (e.g. Joshua Christ) and Troop 111 concerning Michael Sclawy-Adelman and/or the subject hike dating back to January 1,

2009. South Florida Council believes this reasonably limits the scope of the request, which otherwise would require production of many irrelevant pieces of communication that have nothing to do with the issues in this case.
11. Plaintiffs would not change the request other than to limit it to the past three years. That insufficiently limits the scope.
  12. Item 3 of Schedule A requests,

“All non-privileged correspondence, emails or other types of communication between the South Florida Council and/or this deponent and Defendants Crompton and Schmidt.”
  13. South Florida Council reasserts paragraphs 9 and 10 above.
  14. Item 6 of Schedule A requests,

“All documents, materials or tangible things which the South Florida Council and/or this deponent sent or caused to be sent to Crompton and Schmidt and/or Troop 111.”
  15. South Florida Council reasserts paragraphs 9 and 10 above.
  16. Item 19 of Schedule A requests,

“Any and all documentation, correspondence, memoranda, records or notes regarding complaints made by any individual, entity or agency (whether public or private relative to boy scout hikes for the past 10 years.”
  17. South Florida Council reasserts paragraphs 9 and 10 above. Moreover, this request is nothing more than a fishing expedition. South Florida Council asserts that the request should be limited to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat-related serious illness or death stemming from hikes. Plaintiffs would not agree to limit item 19 in any way.
  18. Item 25 of Schedule A requests,

“A copy of any and all complaints filed in any court of law against South Florida Council relative to scouts injured or killed on boy scout related hikes over the past 10 years.”

19. South Florida Council reasserts paragraphs 9 and 10 above. Moreover, this request is nothing more than a fishing expedition. South Florida Council agreed to limit it to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat related serious illness or death. Plaintiffs agreed only to limit this to 5 years.

WHEREFORE, DEFENDANT, SOUTH FLORIDA COUNCIL, respectfully requests that this Honorable Court enter a Protective Order as to the four Notices of Deposition Duces Tecum (Exhibits A, B, C and D) and hold as follows:

1. Items 1 is limited to non-privileged correspondence between the named deponent and Troop 111 concerning Michael Sclawy-Adelman and/or the subject hike dating back to January 1, 2009.
2. Items 3 is limited to non-privileged correspondence between the named deponent and Howard Crompton and Andrew Schmidt concerning Michael Sclawy-Adelman and/or the subject hike dating back to January 1, 2009.
3. Items 6 is limited documents, materials or tangible things which the named deponent sent or caused to be sent to Howard Crompton and Andrew Schmidt concerning Michael Sclawy-Adelman and/or the subject hike dating back to January 1, 2009.
4. Item 19 is limited to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat-related serious illness or death stemming from hikes.
5. Item 25 is limited to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat-related serious illness or death stemming from hikes.

### **CERTIFICATION OF GOOD FAITH**

Pursuant to Local Rule 7.1(a)(3) counsel for the movant has conferred with counsel for the Plaintiffs who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true copy of the foregoing was sent February 2, 2011 to:  
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